DOCUMENT RESUME

ED 310 986 SO 020 223

AUTHOR Weil, Jonathan S.
TITLE The United States and the Indian Constitution.
SPONS AGENCY Center for International Education (ED), Washington, DC.
PUB DATE 20 Jan 88
NOTE 21p.; Project was developed as a requirement of the Fulbright Summer Seminar Abroad Program. Copyrighted material (including the appended Salman Rushdie article) was removed from the document received by ERIC.
AVAILABLE FROM Indian Council for Cultural Relations, 10 Daryanj, New Delhi, India 110002 (45 R.S.).
PUB TYPE Reports - Research/Technical (143)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Civil Rights; Comparative Analysis; *Constitutional History; Cross Cultural Studies; *Democracy; Foreign Countries; *Governmental Structure; Religious Conflict; *World History
IDENTIFIERS Constitutions; Hinduism; *India; Islam; *United States Constitution

ABSTRACT

India, a huge land with the second largest population in the world, socially and economically poor, and culturally and linguistically diverse, became the largest democracy in the world on November 26, 1949 with the adoption of the Indian Constitution. The goals of that constitution are: (1) the achievement of national unity and stability; (2) the promotion of democratic political behavior based on parliamentary procedures; (3) the protection of minority interests; and (4) the expression of general principles and humanitarian sentiments. In many ways, the Indian Constitution, its language and provisions, are remarkably similar to the U.S. Constitution. A radio telecast from August 15, 1947 (S. Radhakrishnan) illustrates some of those similarities, as does a side-by-side comparison of parts of U.S. and Indian Constitutions (preamble, rights to equality, freedom, and constitutional remedies). An article by Salman Rushdie, "After Midnight," is included as an appendix, and focuses on the 40th anniversary of Indian independence and the continuing strife between Hindus and Muslims, and asks the question, "Does India exist?" A bibliography of four additional references is included. (PPB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

10/5/88-L

ED310986

SP030223

THE UNITED STATES AND THE INDIAN CONSTITUTION

Jonathan S. Weil
Evanston Township High School
1600 Dodge Avenue
Evanston, Illinois 60204

January 20, 1988

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

JONATHON S. WEIL

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

BEST COPY AVAILABLE

This project was completed with funding from the United States Department of Education, Center for International Education, Fulbright Summer Seminar to India - 1987.

THE UNITED STATES AND THE INDIAN CONSTITUTION

Background

On August 15, 1947, the British Empire quit India. This ended the pomp and magnificence of Kipling's British Raj, the fabulous splendors of the princely maharajas, and the beginning of a new nation torn apart by violence, famine, and poverty. Fourteen months later, on November 26, 1949, the Constituent Assembly adopted a constitution and India became the largest democracy in the world. This event is perhaps the greatest political venture since the adoption of the United States Constitution in Philadelphia in 1787. A huge land with the second largest population in the world, socially and economically poor, and culturally and linguistically diverse, India attempted to achieve administrative and political unity and an economic and social revolution under a new democratic constitution.

To a great extent, the United States has been shaped by arguments over the Constitution, as it has been by the Constitution itself. Anthony Lewis, New York Times columnist, wrote in celebration of the United States Constitution:

> "It is our rock and our redeemer, the civil religion of a society that has no state church. It is a unifying symbol as powerful in our diverse Republic as the queen in a monarchy. It is history: roots for a country with little sense of the past. For a restless people, it is the prime source of stability, of certainty.[1]

1. Lewis, Anthony, "An Ingenious Structure", The New York Times Magazine, September 13, 1987, P. 39.

The Indian Constitution has been accepted by its people as the charter of its country's future. With its adoption, Indians were responsible for their own governance for the first time in 150 years and free to shape their own destiny. The members of the Constituent Assembly did not work in a vacuum. From 1947 to 1950, India was marked with domestic violence over the partition of Pakistan, enormous food shortages, the continuing trial of Mahatma Ghandi's murderer, and communist subversion. The purpose of the Indian Constitution was to foster an economic and social revolution. Specifically, its goals included:

1. To achieve national unity and stability;
2. To promote democratic political behavior based on parliamentary procedures;
3. To protect minority interests; and
4. To express general principles and humanitarian sentiments.

Some of the characteristic features of The Constitution include:

The Indian Constitution contains 395 articles and nine schedules. It is the longest Constitution in the world.

It makes India a sovereign, democratic republic and also a secular state.

It is federal in character.

It divides powers between the Union and the States, though the Union has more power.

It provides for a single citzenship for the whole of India.

It provides for a uniform single judiciary for the whole of India.

It gives the right to vote to all citzens of 21 years and above.

It provides for a parliamentary form of government, both at the Union and the State level.

It guarantees to all citzens certain fundamental rights.

It provides the Directive Principles of State Policy to guide the State in law-making for social and economic welfare.

It lists Fundamental Duties expected of all citzens in India.

PROCEDURES AND PURPOSES

In many ways, the Indian Constitution, its language and provisions, are remarkably similar to the United States Constitution. The following curricula provides students an opportunity to examine the first forty years of Indian independence as well as key sections in their Constitution. Read these sections carefully and identify those passages and provisions that are "remarkably similar to the United States Constitution" or are "distinctively Indian".

(1) Read a statement broadcast by All India Radio on August 15, 1947, on "Indian Independence" by Sarvepalli Radhakrishnan.

In what ways was the Indian independence movement similar or different from the American Revolution. What kind of problems did India face in 1947? Were these problems similar or different that the new United States government faced in 1787.

(2) Read selected sections from the Indian and United States Constitutions. Examine similarities and differences and discuss implications.

(3) Read the 'Letter from India', "After Midnight", by Salman Rushdie. He is author of Midnight's Children, a novel about a child born at the stroke

of midnight on August 15, 1947. He parallels Indian history with the development and the hopes and disappointments of a child growing up in India.

Based on your understanding of India past and present, do you think that Rushdie is overly pessimistic or optimistic about India's future?

INDIAN INDEPENDENCE

SARVEPALLI RADHAKRISHNAN

HISTORY and legend will grow round the 15th of August 1947, as that date marks a milestone in the world's march towards democracy. In the drama of a people rebuilding and transforming themselves, it is a significant date. The night of India's subjection has been long, full of fateful portents and silent prayers of men for the dawn of freedom. For this day sacrifices have been made and there have been weepings and sorrows, haunting spectres of hunger and death. Steadily through the night the sentinals have kept watch; the lights have been burning bright and now the dawn which breaks the night of ages has come.

That this transition from subjection to freedom should have been effected by democratic procedure is an occasion as happy as it is unique. In the House of Commons Mr. Attlee spoke with obvious pride of this courageous act of abnegation. It is the first instance, he said, when an

From statement broadcast by All India Radio on August 15, 1947

Imperial power voluntarily transferred its authority to a subject people whom it had ruled with force and firmness for nearly two centuries. In the past, empires were liquidated either by pressure near the centre as in Rome, or by exhaustion as in Spain, or by military defeat as in the case of the Axis powers. For deliberate surrender of authority there is no parallel except in the American withdrawal from the Philippines or perhaps the British withdrawal from South Africa, though all these are very different in scale and circumstances. To a strong people nothing can even be harder than to do something which is likely to be attributed to motives of weakness or cowardice. If the British decided to quit India we may agree that it is due not so much to a sense of weakness as to an unwillingness to use the methods of blood and steel. They listened to the demand of the Indian people and by an act of courageous statesmanship blotted out the memory of past ill-will and friction.

We on our side have added a glorious chapter to the history of the world by furnishing an instance where a subject race has won its freedom by opposing patience to fury, quietness of spirit to bureaucratic tyranny. Gandhi and those who followed him participated in the long battle of India's freedom with clean weapons and civilised dignity. They have won the struggle without leaving behind any hatred or bitterness of spirit. The appointment of Lord Mountbatten as the Governor General of India illustrates the spirit of friendliness and understanding that prevails between erstwhile enemies. A new era in British Indian history is thus opened as the fruit of a century of effort and struggle, and it will go down as the most outstanding event in living memory.

There is, however, a shadow over our rejoicings, a sadness in our hearts, for the independence we dreamed of and fought for has not come to us. Such is the perversity of things that the Swaraj of our dreams at the moment of its attainment has slipped through our fingers. A divided India will continue to be dependent unless the two Dominions establish friendly relations and work for common interests. The extent of our disappointment is reflected in the satisfaction of the Tories in England. While Churchill characterised the Cabinet Mission Report as a 'melancholy document' and the declaration to quit as a 'scuttle' from India, he gave enthusiastic support to the present plan, thus indicating that it implements the Conservative policy for India.

At a time when the States of the world are moving towards large groups, we are throwing away the one advantage of political and economic unity which British rule brought to this country. When the new conditions demand economic planning on a Continental scale, we are reverting to a divided India. Whether India will be safer with two armies than with one remains to be seen.

If our leaders graciously took up the responsibility for the decision to divide the country, it is because they found no other alternative acceptable to the different parties. By a succession of acts of surrender we found

ourselves in a position from which division was the only way out.

India has had Englishmen of different varieties, Englishmen who came here for a hundred different reasons, priests and nuns, merchants and adventurers, soldiers and diplomats, statesmen and idealists. They marched and fought in it, bought and sold in it, plotted and profited in it. But the greatest of them wished to raise India's social and economic standards and political status. They worked for the welfare of the people and the modernisation of the country. But the small-minded amongst them worked with sinister objectives. When separate communal electorates were conceded, Lady Minto refers to a letter received from an important official: "I must send your Excellency a line to say that a very very big thing has happened today. A work of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of 62 millions of people from joining the ranks of the seditious opposition." Separate electorates intensified communal consciousness and created such an atmosphere of mistrust and hostility as to arouse the demand for Pakistan.

We cannot attribute all our troubles to the British. We have lent ourselves to the policy of separatism. We have been ready victims of it. Unless we cure ourselves of our national faults of character we cannot rebuild a united India. What faces us is not so much a political division as a psychological split. India today is not in a normal condition. The accumulated mistrusts and tensions will take time to subside. If freedom is to be a positive, dynamic, liberating force it must manifest itself in tolerance for each other's views, truths, beliefs. Because the country is divided we should not delude ourselves that the crisis is past. Immediate relaxation of tension is not enough.

Though our hearts be laden with sorrow, we must put our country on its way to progress. The Indian body politic is no more. But the Indian body historic lives on, no matter how absent-minded and divided against itself and unaware of its own existence. Political divisions are not permanent. Cultural and spiritual ties are more enduring. We must foster them with care and reverence. Islam spread in India by conversion—not immigration. Ninety per cent of the Muslims belong to the same social and ethnic stock, inherit the same culture, inhabit the same territory and possess the same habits and modes of belief. We must develop unity by a slow process of education, patient consideration and eventual realisation that the issues which led to the partition are in fact already obsolete. The cure for communalism lies in first curing the evils of poverty, ill health, illiteracy, agricultural and industrial backwardness. If these are controlled, communal differences are not likely to remain seriously provocative. Between the two parts of Pakistan the Dominion of India lies and Pakistan must enter into some relationship with this Dominion in the matter of communications. On the question of Indonesia the two Dominions have a common policy.

On many other matters the geographical situation will demand a common foreign policy. The development of water power and transport will require joint action. Thus we can promote the real unity of the country by the co-operation of the two Dominions for mutual welfare, by the free intercourse among their inhabitants and by the defence of common ideals. Fervid speeches and resolutions will not do. The language of anger never helps. Patience and understanding are the need of the hour.

There must be a sense of exhilaration when we feel that we are our own masters, that we can decide our own future. We may make mistakes—grave, perhaps avoidable—but all these are nothing in comparison with the stimulus that comes from freedom. The existing conditions are a challenge to our competence and wisdom. The greatest calamity will be when power outstrips ability. Let it not be said that when the test came we were found unequal. We have not gained the Promised Land. We have to work to clear the way for it. The path is long and arduous. It may be through blood and tears, toil and suffering. The people will conquer in the end. Some of us may not live to see it but we can foresee it.

A civilisation is not something solid and external. It is the people's dream, their imaginative interpretation of human existence, their perception of the mystery of human life. Our distracted human nerves call for a purpose larger than that which castes and communities provide, a purpose which will release us from our pettiness. Bearing ourselves humbly before God, conscious that we serve an unfolding purpose, let us brace ourselves to the task and so bear ourselves in this great hour of our history as worthy servants of the ageless spirit of India.

Section II Sections from Indian and United States Constitutions

1. Read the text in the two Preambles. Identify language that is similar or different. What are the more obvious differences in text? the less obvious or sutle?

Indian Preamble	United States Preamble
We, the People of India, having solemnly resolved to constitue India into a sovereign socialist secular democratic republic and to secure to all its citzens:	
JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;	We, the people of The United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.
EQUALITY of status and of opportunity: and to promote among all FRATERNITY assuring the dignity of the individual and the unity of the Nation;	
In our Constituent Assembly do hereby adopt, enact and give to ourselves this Constitution.	

2. The most important component of India's Constitution is the part which secures for every citzen their Fundamental Rights. For every American, the Bill of Rights takes on the same importance. The Indian Constitution section on Fundamental Rights is more elaborate and exhaustive than in any other Constitution in the world. This section was partly based and certainly inspired by the United States Constitution.

   The original Constitution classifies Fundamental Rights into seven heads or categories:

   *Right to Equality
   *Right to Freedom
   *Right Against Exploitation
   *Right to Freedom Of Religion
   *Cultural and Educational Rights
   *Right to Property
   *Right to Constitutional Remedies

   In 1978, the Right to Property has been omitted as a Fundamental Right from the Constitution. Some vestiges of it remain in view of the Constitutional provision for payment of compensation in the State's acquisition of property.

   Examine and discuss how basic human rights have been defined in the Indian and United States Constitutions.

A. Right To Equality

India	United States
Article 14	Fourteenth Amendment
The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.	No state shall make or enforc any law which shall abridge the privileges or immunities of the United States; nor shall any State deprive any person of life, liberty, or property, with due process of law.
i. Equality before the law ii. Equality of opportunity in matters of public employment iii. Absence of any discrimination on grounds of religion, race, caste, sex or place of birth iv. Abolition ofuntouchability v. Abolition of titles (except for academic or military distinctions)	

B. Right to Freedom

India	United States
Article 19 Protection of certain rights regarding freedom of speech: All citzens shall have the right- i. to freedom of speech and expression; ii. to assemble peaceably and without arms; iii. to form associations or unions; iv. to move freely throughout the territory of India; v. to reside and settle in any part of the territory of India; and vi. to practise any profession, or to carry on any occupation, trade, or business.	First Amendment Congress shall no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

C. Right to Freedom of Religion

India	United States
Articles 25-28 ...all persons are equally entitled to freedom of conscience and the right to freely to profess, practice and propagate religion.*	First Amendment Fourteenth Amendment See Above.*

The Right to Freedom of Religion is very different in the Indian context from the American experience. India is a country characterized by plurality of religious faiths. While the religious faith of a vast majority of the people is traditional Hinduism, a sizeable section of the population professes other religious faiths, like Islam, Christianity, Buddhism, Jainism, Sikhism, Zoroastrianism, etc. Its leaders have been firmly committed to the ideal of a Secular State: A State which observes an attitude of neutrality or impartiality toward all religions and wants to create an environment in

which every person, irrespective of his religious faith or denomination feels free to profess, practice and propagate his religion individually or through distinct institutions. There is no State religion in India. It is a secular republic but the Indian context is very different from the American experience. In the United States Constitution, a wall of separation between church and state by disestablishing religion. The U.S. Constitution gives the American people, however, the right to believe and not to believe -the right to join a church or the right to be an agnostic or an atheist. It is that Americans cannot practice or propagate religion in public institutions.

D. Rights to Constitutional Remedies

India	United States
Article 32	Article III, Section 2
"...the Supreme Court shall have the power to issue directions or orders or writs including writs of habeas corpus, mandamus, quo warranto and certiorari, may be appropriate, for the enforcementof any of the rights conferred by Part III.	The Judicial Power shall extend to all Cases, in Law and Equity...

The power of judicial review is very different under the Indian and the United States Constitutions. According to one Indian Constitutional expert, it is "the cornerstone of the entire edifice set up by the Constitution...an article without which this Constitution would be invalid." In India, the Supreme Court can initiate review of any piece of legislation and can declare it null and void. Indian courts are vested with the authority to enforce the Fundamental Rights of the Constitution. In the American constitutional system, this is done only through writs or judicial processes, initiated by private citzens. There are other situations in which the Congress or the President or the States have the last word in a constitutional debate. For example, if a President vetoes a bill because he believes it to be unconstitutional, the Supreme Court cannot reach out and overrule that veto.

3. The Indian Constitution contains principles which States must follow both in law-making and in administration. There is no comprable section in the United States Constitution. According to the DIRECTIVE PRINCIPLES OF STATE POLICY, the State should try to secure the social well-being of the people and establish social and economic democracy. The Constitution thus seeks to make India a Welfare State.

   To achieve this aim, the State should strive

   i. to see that all citzens have the right to an adequate means of livlihood
   ii. to provide equal pay for equal work for both men and women
   iii. to organize village panchayats
   iv. to enact a uniform code for all citzens
   v. to provide free and compulsory education for children till they are fourteen
   vi. to raise the standard of living and to improve public health
   vii. to organize agriculture and animal husbandry
   viii. to protect monuments and places and objects of national importance
   ix. to keep the functions of the executive and the judiciary separate
   x. to promote international peace and security.

4. An unique feature of the Indian Constitution is a list of Fundamental Duties of the citzens of India. Under this article, the following shall be the duty of every citzen:

   i. To abide by the Constitution of India and respect the national flag and the national anthem;
   ii. To cherish and follow the noble ideals which inspired our national struggle for freedom;
   iii. To protect the soverignty, unity and integrity of India;
   iv. To defend the country;
   v. To promote the spirit of common brotherhood amongst all the people of India;
   vi. To preserve the rich heritage of our composite culture;
   vii. To protect and improve the natural environment;
   viii. To safeguard public property;
   ix. To strive towards excellence in all spheres of individual and collective activity.

6. In a parliamentary form of government, real executive powers are vested in the Prime Minister who is the leader of the party in majority in The House of the People. In the United States Constitution, there is a very clear and separate of powers in the legislative, executive, and judicial branches of government. The Constitutional principal is called 'checks and balances'.

   Note the difference in the influence and power between the Prime Minister in India and the President of the United States. Why do you think India chose a political system that allowed such pre-eminence and power to their leader?

India	United States
Articles 52-74	Article II
The executive power of the Union shall be vested in the President who is elected by the members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. The Prime Minister is appointed by the President but he must command a majority in the House of the People and is collectively responsible to the House of the People.	The executive Power shall be vested in a President of the United States of America
The Prime Minister and his Council of Ministers aid and advise the President who shall, in the exercise of his function, act in accordance with such advice. The President may require the Council of Ministers to reconsider such advice but the President shall act in accordance with the advice tendered after such reconsideration.	Article III The judicial Power of the United States, shall be vested in one Supreme Court... Article I All legislative Power herin granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Indian

7. The Constitution provides for both a Union Government and State Governments. India is a Union of States, and the Constitution is federal in character. The term 'federal' means a system where powers are divided between the Union and the State Governments. For certain things, only the Union Government is responsible; for certain other things, the State Governments are responsible; while for some, both Governments share responsibility. However, the States do not enjoy powers equal to those of the Union Government. During an emergency the Union Government can always deprive the States of their authority. Specific powers are enumerated in the Indian Constitution for the Union Government, for the State Governments, and on the Concurrent List (shared responsibility).

   Federalism is not as clearly defined in the U.S. Constitution. What specific powers do the States have? What guarantees does the Federal Government make to the States?

   Article IV., Section 4 reads: "The United States shall guarantee to every state on this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive against domestic Violence.

8. Read the Emergency Provisions of the Indian Constitution carefully. Do you think that this provision is too permisive, in that it allows the Indian Government too much freedom or is too vague? Were there historical circumstances that justify the insertion of the Emergency Provisions? Are there adequate safeguards?

   Article 352-359 Proclamation of Emergency

   If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a declaration to that effect... for a period of sixty days...which be approved by a majority of not less than two-thirds of the members of each House of Parliament.

   Where a Proclamation of Emergency is in operation, the President may by order clare that the right to move any court for the enforcement of such rights...shall remain suspended...

9. A characteristic of a good Constitution is that it should be neither irrevocable nor too easily changeable. The Indian Constitution has been amended 55 times in 38 years. The U.S. Constitution inaugerated in 1789 has been amended 26 times in 199 years. What reasons, for or against, exist for a making a Constitution easy to amend? In making a Constitution easy to amend, are the Founding Fathers saying that the laws passed by Congress or Parliament are 'the supreme law of the land'?

India	United States
Part XX	Article V
An amendment of this Constitution may be initiated by either House of Parliament, and when it is passed in each House of Parliament by a majority of the total membership of that House...the Constitution shall stand amended in accordance with the terms of that Bill.	The Congress, whenever two-thirds of both Houses shall deem it necesssary, shall propose amendments to this Constitution, ir, on the application of the Legislature of two-third of the several States, shall call a convention for proposing Amendments. and ratified by Legislatures of three-fourths of the several States, or Coventions in three-fourths thereof...

"After Midnight" by Salman Rushdie
Vanity Fair, September 1987, p. 88-94

BIBLIOGRAPHY

Austin, Granville, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, Bombay, 1985

Raghavan, G.N.S. (editor), Readings from India, Indian Council for Cultural Relations, New Delhi, 1980

WE THE PEOPLE, published by the Educational Resources Center, United States Educational Foundation in India, New Delhi, 1978

Constitution of India, Eastern Book Company, Lucknow, India, 1986

Rushdie, Salman, "After Midnight", Vanity Fair, September, 1987, Pp. 88-94